

R.D. #0004-06
Guttenberg, NJ

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22**

**GALAXY TOWERS CONDOMINIUM
ASSOCIATION¹**

Employer

and

CASE 22-RC-12684

**INTERNATIONAL UNION OF JOURNEYMEN
AND ALLIED TRADES, LOCAL 124²**

Petitioner

DECISION AND DIRECTION OF ELECTION

I. INTRODUCTION:

The Petitioner filed a petition, under Section 9(c) of the National Labor Relations Act, seeking to represent a unit of all service employees, maintenance employees and garage attendants, including master mechanics, handy men, concierges, doormen, porters, matrons, security guards,³ parking attendants and hallmen employed by the Employer at a facility known as Galaxy Towers in Guttenberg, New Jersey, excluding all office clerical employees, managers, managerial employees, guards and supervisors as defined in the Act. Local 734, Laborers International Union of North America, AFL-CIO, Change To Win, herein the Intervenor, was permitted to intervene in this proceeding based on its asserted collective

¹ The name of the Employer appears as amended at the hearing.

² The name of the Petitioner appears as amended at the hearing.

³ The status of this classification is discussed below in fn. 9.

bargaining relationship with the Employer covering the unit of employees involved in this matter.⁴

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record,⁵ I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.⁶
3. The labor organizations involved here claim to represent certain employees of the Employer.⁷
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.⁸
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All service employees, maintenance employees and garage attendants, including master mechanics, handy men, concierges, doormen, porters, matrons, security guards, parking attendants and hallmen employed by the Employer at a facility known as Galaxy Towers in Guttenberg, New

⁴ A collective bargaining agreement between the Employer and the Intervenor, effective from June 3, 2003 through June 2, 2006, was admitted into evidence.

⁵ No briefs were filed.

⁶ The Employer, a New Jersey corporation, is engaged in the management of a residential condominium complex located at its Guttenberg, New Jersey facility, the only facility involved herein.

⁷ The parties stipulated, and I find, that the Intervenor is a labor organization within the meaning of the Act. The status of the Petitioner as a labor organization will be discussed below.

⁸ There are no bars asserted to an election being conducted in this matter.

Jersey, excluding all office clerical employees, managers, managerial employees, guards and supervisors as defined in the Act.⁹

II. BACKGROUND:

The Employer is engaged in the management of a residential condominium complex located at its Guttenberg, New Jersey facility. The Employer and the Intervenor are parties to a collective bargaining agreement, covering the unit of employees involved in this petition, which is effective from June 3, 2003 through June 2, 2006. No party in this matter asserts that there is a contract or other bar to an election in this matter.

III. LABOR ORGANIZATION STATUS:

The Employer stipulated to the labor organization status of both the Petitioner and the Intervenor under the Act. The Petitioner stipulated to the labor organization status of the Intervenor. At issue is the labor organization status of the Petitioner.

A. Status of the Petitioner

With regard to the labor organization status of the Petitioner, there are essentially only two requirements for a party to meet to achieve the status of a labor organization as defined by Section 2(5) of the Act: first, it must be an organization in which employees participate; and second, it must exist for the purpose, in whole or in part, of dealing with employers concerning wages, hours, and other terms and conditions of employment. *Alto Plastics Manufacturing Corp.*, 136 NLRB 850 (1962).

⁹ The unit description is in accord with the stipulation of the parties and is consistent with the contractual unit represented by the Intervenor. The parties stipulated, and I find, that the employees in the classification denominated as security guards, included in the unit here, do not possess any indicia of statutory guards status as defined in Section 9(b)(3) of the Act, as they do not enforce against employees and other persons rules to protect property of the Employer or to protect the safety of person's on the Employer's premises. *55 Liberty Owners Corp.*, 318 NLRB 308 (1995); *Wolverine Dispatch, Inc.* 321 NLRB 796 (1996); *The Boeing Company*, 328 NLRB 128 (1999). Further, the parties agree that there are approximately 90 to 100 employees in the unit.

In this regard, the record reveals that employees participate in the affairs of the Petitioner by attending meetings, voting in internal union elections, serving as shop stewards and participating in meetings regarding contract negotiations. James Bernardone, the Petitioner's Secretary/Treasurer, testified that the Petitioner has collective bargaining agreements with employers. Further, the record discloses that the Petitioner exists for the purpose of representing employees dealing with their employers and negotiating on their behalf.

In these circumstances, I find the Petitioner to be a labor organization under Section 2(5) of the Act. *Ana Colon, Inc.*, 266 NLRB 611, 612 (1983); *Alto Plastics Manufacturing Corp.*, above.

IV. DIRECTION OF ELECTION:

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notices of election to be issued subsequently subject to the Board's Rules and Regulations. Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Employees engaged in an economic strike who have retained their status as strikers and have not been permanently replaced are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike that have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are (1) employees

who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **International Union of Journeymen and Allied Trades, Local 124; Local 734 Laborers International Union of North America, AFL-CIO, Change To Win;** or by **Neither**.

V. LIST OF VOTERS:

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, three (3) copies of an election eligibility list containing the full names and addresses of all the eligible voters shall be filed by the Employer with undersigned, who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in the NLRB Region 22, 20 Washington Place, 5th Floor, Newark, New Jersey 07102, on or before, **April 24, 2006**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

VI. RIGHT TO REQUEST REVIEW:

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by, **May 1, 2006**.

Signed at Newark, New Jersey this 17th day of April 2006.

/s/ Gary T. Kendellen

Gary T. Kendellen, Director, Region 22
National Labor Relations Board
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